

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS**

WILLIAM STAPLES,

Petitioner,

v.

**CIVIL ACTION NO. 2:16-CV-18
(BAILEY)**

WARDEN TERRY O'BRIEN,

Respondent.

ORDER DENYING MOTION FOR IMMEDIATE RELEASE

This matter comes before this Court upon consideration of the *pro se* petitioner's Motion for Immediate Release [Doc. 42], filed December 7, 2018. On October 19, 2018, the United States Court of Appeals for the Fourth Circuit issued an opinion and judgment vacating this Court's Order Denying Petition for Writ of Habeas Corpus [Doc. 30] and remanding this case to this Court for further consideration in light of *United States v. Wheeler*, 886 F.3d 415 (4th Cir. 2018), and to independently evaluate whether the prior convictions that supported petitioner's armed career criminal designation remain viable predicates after the Supreme Court's ruling in *Johnson v. United States*, 135 S.Ct. 2551 (2015). Petitioner's Motion asks this Court "to hear and decide this case within five (5) days after receiving this motion for immediate release" [Doc. 42 at 3]. Upon consideration, petitioner's Motion will be denied.

As the Fourth Circuit's judgment states, the judgment does not take effect until issuance of the Fourth Circuit's mandate [Doc. 41]. To date, the mandate has not issued. Once the mandate is issued, petitioner can be assured that this Court will review and

decide this matter in a timely fashion, consistent with the Fourth Circuit's decision. Accordingly, petitioner's Motion for Immediate Release [Doc. 42] is hereby DENIED.

It is so ORDERED.

The Clerk is directed to transmit copies of this Order to any counsel of record herein and to mail a copy to the *pro se* petitioner.

DATED: December 7, 2018.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE